

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2004-0074-C – ORDER NO. 2004-314

JULY 2, 2004

IN RE:	Application of TC Systems, Inc. for a)	ORDER GRANTING
	Certificate of Public Convenience and)	CERTIFICATE
	Necessity to Provide Local Exchange Service)	
	(including Exchange Access) and Intrastate)	
	and Interexchange Telecommunications)	
	Services within the State of South Carolina)	
	and for Flexible Rate Structure and)	
	Alternative Regulation.)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of TC Systems, Inc. (“Applicant” or “TC Systems”) for authority to provide local exchange, including exchange access, and interexchange telecommunications services within the State of South Carolina (the “Certification Application”).

Further, the Applicant requests that the Commission regulate its local retail telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, the Applicant requests that the Commission regulate its business interexchange service offerings under the identical regulatory treatment granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

The Applicant's Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2003), S.C. Code Ann. Section 58-9-585 (Supp. 2003), and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Applicant complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC") on April 24, 2004.

On May 12, 2004, counsel for the SCTC filed with the Commission a Stipulation. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to the Applicant provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on Thursday, June 3, 2004, at 10:30 p.m. in the Commission's Hearing Room. The Honorable Mignon Clyburn, Chairman, presided. John J. Pringle, Jr., Esquire, represented the Applicant. Jocelyn Boyd, Staff Counsel, represented the Commission Staff. Denise Berger, District Manager of Local Services and Access Management for AT&T Network Services, appeared and testified in support of the Application. Ms. Berger adopted the prefiled testimony of John S. Szczepanski.

According to the record, the Applicant is a Delaware Corporation formed on September 20, 1989. The Applicant is an indirect, wholly-owned subsidiary of AT&T Corp. (“AT&T Corp”) and is an affiliate of AT&T Communications of the Southern States, LLC (“AT&T”), which is already certified to provide telecommunications service in South Carolina. AT&T Corp is the ultimate parent corporation of Applicant and AT&T. Applicant is part of the Teleport Communications Group (“TCG”) of entities that became part of AT&T Corp in 1998. The Applicant has received authority from the South Carolina Secretary of State to transact business within the State of South Carolina.

As to the services which TC Systems seeks to provide, the record shows that TC Systems proposes to lease transmission lines and unbundled network elements (“UNEs”), including the UNE Platform (“UNE-P”), from incumbent carriers in order to facilitate the provision of two retail services (All in One and Prime Path) by AT&T. As the purchaser of the local network elements from the incumbents, TC Systems will be positioned to provide terminating access services to those carriers that transmit calls to the customers of the retail services provided over those elements.

According to Ms. Berger, initially TC Systems will exclusively purchase UNEs from BellSouth Telecommunications, Inc. (“BellSouth”) for services to be provisioned to retail customers in South Carolina by the AT&T Business Services unit and marketed under the AT&T brand. As explained by Ms. Berger, AT&T must be able to separately track revenue and expenses incurred by its Business Services unit. The only way the Business Services’ revenues and expenses can be tracked separately from the Consumer Services unit is through the use of an Operating Company Number (“OCN”), a code used

in the telephone industry to identify a telephone company. Companies are only allowed one OCN per state for the purchase of UNE combinations. Because AT&T is currently using its South Carolina OCN for the provisioning of residential services (i.e., the Consumer Services unit), AT&T needs another OCN (and another company) in order to track business services separately. With separate certification, TC Systems can purchase UNE combinations from BellSouth, provision services to business customers, and specifically identify revenues and expenses associated with those business services.

Ms. Berger further explained that AT&T Corp began separate tracking of the revenues and expenses associated with its business and residential services by using a TCG entity as a result of its acquisition of the TCG companies in 1998. In the future, TC Systems may provide retail local exchange and interexchange telecommunications services. Accordingly, the Applicant has asked this Commission for approval of alternative regulation of its business services as was first approved by the Commission in Orders No. 95-1734 and 96-55, Docket No. 95-661-C, and modified by Order No. 2001-997, and flexible regulation for local exchange services first approved in Docket 97-467-C.

Ms. Berger opined that TC Systems possesses the technical, managerial and financial resources to provide telecommunications services in the State of South Carolina. The people providing technical, financial and managerial support to TC Systems are the same people that provide support to AT&T Corp, AT&T Communications of the Southern States, LLC and the other affiliates of AT&T Corp. Financial statement excerpts from AT&T Corp's 2003 Annual Report to Stockholders were attached to the

prefiled testimony and demonstrate that AT&T Corp and its subsidiaries, including the Applicant, possess the financial ability to provide telecommunications services in South Carolina.

Ms. Berger asserts that the Applicant will operate in compliance with all applicable statutes, regulations, and Commission orders. Further, Ms. Berger testified that TC Systems has never had authority denied in any state where it has applied for authority nor has TC Systems had authority revoked in any state where it has been granted authority. Additionally, she stated TC Systems has never been the subject of an investigation or sanctioned for service or billing irregularities by any regulatory authority. According to the testimony, the Applicant has not marketed its services in South Carolina prior to receiving certification, and the Applicant has not received revenues from the completion of intrastate calls in South Carolina prior to receiving certification. Ms. Berger stated that the Applicant will abide by all applicable Commission rules, regulations and Orders upon the Applicant receiving certification to provide intrastate interexchange and local exchange (including exchange access) telecommunications services in South Carolina.

Ms. Berger discussed the Applicant's request for certain waivers of Commission regulations. The Applicant requests that it be exempt from any rules or regulations that would require it to keep financial records in conformance with the Uniform System of Accounts ("USOA"). Additionally, the Applicant seeks a waiver of 26 S.C. Code Ann. Regs. 103-631 (1976 & Supp. 2003) so that it will not be required to publish local exchange directories. The Applicant will contract with at the incumbent local exchange

carrier (or its directory publishing affiliate) for the inclusion of the Applicant's CLEC databases into the master customer database of the local exchange carrier. The Applicant also seeks a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976 & Supp. 2003) so that the Applicant can maintain its records outside of South Carolina. The Applicant wishes to maintain books and records at its headquarters in Bedminster, New Jersey. Finally, the Applicant requests a waiver of 26 S.C. Code Regs. 103-612.2.3 which requires the filing of operating area maps. TC Systems states that it intends to offer services throughout the geographic service areas of the incumbent local exchange carriers operating within South Carolina.

After full consideration of the applicable law, the Applicant's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Applicant is an indirect, wholly-owned subsidiary of AT&T Corp, a New York corporation and an affiliate of AT&T Communications of the Southern States, LLC. TC Systems is duly organized and exists under the laws of the State of Delaware and has been authorized to do business in the State of South Carolina by the Secretary of State.

2. The Applicant is a provider of local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina.

3. The Applicant has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B)(1) (Supp. 2003) .

4. The Commission finds that the Applicant’s “provision of service will not adversely impact the availability of affordable local exchange service.” S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2003) .

5. The Commission finds that the Applicant will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B)(4) (Supp. 2003).

6. The Commission finds that the services to be provided by the Applicant will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B)(2) (Supp. 2003).

7. The Commission finds that the provision of local exchange service by the Applicant “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2003).

8. Following execution of the Stipulation with the SCTC, the SCTC withdrew its opposition to the Application.

9. The Commission finds good cause to grant the following waivers of the Commission’s rules and regulations as requested by the Applicant: (1) waiver of 26 S.C. Code Regs. 103-631 (1976 and Supp. 2003) concerning the publication of local directories, (2) waiver of 26 S.C. Code Regs. 103-610 (1976 and Supp. 2003) requiring the Applicant to maintain its financial books and records within the State of South

Carolina, (3) waiver of the requirement that books and records be maintained in accordance with the Uniform Systems of Accounts (“USOA”), and (4) waiver of 26 S.C. Code Regs. 103-612.2.3 (1976) requiring the filing of operating area maps.

10. We find that the issuance of the authority requested by TC Systems is in the best interests of the citizens of the State of South Carolina.

CONCLUSIONS OF LAW

1. The Commission concludes that the Applicant possesses the managerial, technical, and financial resources to provide the competitive local exchange (including exchange access) and interexchange telecommunications services as described in the Application.

2. The Commission concludes that the Applicant’s “provision of service will not adversely impact the availability of affordable local exchange service.”

3. The Commission concludes that the Applicant will participate in the support of universally available telephone service at affordable rates to the extent that the Applicant may be required to do so by the Commission.

4. The Commission concludes that the Applicant will provide services that will meet the service standards of the Commission.

5. The Commission concludes that the provision of local exchange services by the Applicant will not otherwise adversely impact the public interest.

6. Based on the above findings of fact, the Commission determines that a statewide Certificate of Public Convenience and Necessity should be granted to the Applicant to provide competitive local exchange services. The terms of the Stipulation

between the Applicant and SCTC are approved, and adopted as a part of this Order. Therefore, any proposal to provide local telecommunications services to areas served by rural telephone companies is subject to the terms of the Stipulation. In addition, the Applicant is granted authority to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA through its own facilities, through the purchase of UNEs, or through the resale of services offered by other carriers in accordance with tariffs approved by the Commission.

7. The Commission concludes the Applicant's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Applicant's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, the Applicant's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

8. The Commission adopts a rate design for the long distance services of the Applicant consistent with the principles and procedures established for alternative

regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and modified by Order No. 2001-997.

Under the Commission approved modified alternative regulation, the business service offerings of the Applicant, including consumer card services and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to the Applicant also.

9. With regard to the residential interexchange service offerings of the Applicant, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure

incorporating maximum rate levels. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

10. With regard to residential interexchange service rates, the Applicant shall not adjust its residential interexchange service rates below the approved maximum levels without notice to the Commission and to the public. The Applicant shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Applicant's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2003).

11. TC Systems requests an exemption from the requirement that the Company to keep certain of its financial records in accordance with the Uniforms System of Accounts. In order to provide for the efficient operation of the Applicant's business, the Commission approves a waiver and hereby permits the Applicant to maintain its records in accordance with GAAP. The Applicant is, however, required to record and maintain records specific to its business operations in the State of South Carolina and to make such records available for inspection by employees of this Commission.

12. TC Systems additionally requests a waiver of 26 S.C. Code Regs.103-631 to publish and distribute local directories. TC Systems has agreed to make arrangements with the incumbent LECs in the areas where the Company will do business to arrange for the publication of its customers numbers in the incumbent LECs' telephone directories. On this basis that Commission concludes that TC Systems should be granted this requested waiver.

13. TC Systems requests a waiver of 26 S.C. Code Regs.103-610 which requires that the Applicant keep its books and records in the State of South Carolina. As the Applicant's headquarters is located in Bedminster, New Jersey, the Commission concludes that an exemption from the Regulation is warranted. The Applicant shall, however, make its books and records available for inspection by the Commission and shall bear any cost associated with such an inspection as a result of the Company being permitted to maintain its books and records in New Jersey.

14. TC Systems also requests that it be exempt from the map filing requirement under 26 S.C. Code Regs.103-612.2.3. Because the Applicant seeks approval to operate throughout the State of South Carolina, the Commission concludes that this request is warranted and hereby grants the Applicant's request.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity is granted to the Applicant to provide competitive local exchange and interexchange telecommunications services, via resale or on a facilities-based basis.

2. The terms of the Stipulation between the Applicant and the SCTC is approved and adopted as part of this Order. The Stipulation is attached as Order Exhibit

1. Any proposal to provide competitive local exchange telecommunications services to areas served by rural telephone companies is subject to the terms of the Stipulation.

3. The Applicant shall file, prior to offering access services in South Carolina, its final exchange access service tariff with the Commission.

4. The Applicant shall file, prior to offering local exchange services in South Carolina, a local service tariff with the Commission.

5. The Applicant shall file, prior to offering interexchange services in South Carolina, a long distance tariff with the Commission.

6. The Applicant is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that, for access charge purposes, resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to the Applicant's interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. To the extent the Applicant resells interexchange services, the Applicant shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If the Applicant changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, the Applicant shall comply with the terms of Order No. 93-462, Order Approving

Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission (“FCC”), pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Applicant shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. To the extent the Applicant may provide end user retail services, it shall be required to comply with Title 23, Chapter 47, South Carolina Code of Laws Ann. which governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs the Applicant to contact the appropriate authorities regarding 911 service in the counties and cities where the Applicant will be operating. Contact with the appropriate 911 service authorities is to be made before beginning retail telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Applicant may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing end user services within South Carolina, TC Systems

shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Applicant's operations as required by the 911 system.

11. TC Systems shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, TC Systems shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information for the annual report may be found on the Commission's website at www.psc.state.sc.us/reference/forms.asp. The title of this form is "Annual Report for CLECs" and/or "Annual Report for Interexchange Companies." The Company shall file the annual report form with the Commission by April 1st of each year.

Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may also be found on the Commission's website at www.psc.state.sc.us/reference/forms.asp.

12. Additionally, pursuant to the Commission's regulations, the Company shall file a "CLEC Service Quality Quarterly Report" with the Commission. The proper form for this report can be found at the Commission's website at www.psc.state.sc.us/reference/forms.asp.

13. The Applicant shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Applicant shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies occurring during non-office hours.

The Applicant shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form the Applicant shall use to file this authorized utility representative information can be found at the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>. This form is entitled "Authorized Utility Representative Information." Further, the Applicant shall promptly notify the Commission in writing if the representatives are replaced. The Applicant shall also file with the Commission a copy of their general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2003).

14. The Applicant shall conduct its businesses in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

15. The FCC in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement

the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2001, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to the assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 2, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Applicant must comply with the applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>

16. By its Application, the Applicant requested a waiver of 26 S.C. Code Regs. 103-631 (1976 and Supp. 2003). In lieu of publishing local directories, the Applicant informs the Commission that it will contract with the incumbent LECs to provide the Applicant's customers with directory listings, as well as to undertake the distribution of directories. The Commission finds the Applicant's requests reasonable and grants the requested waiver of the application of 26 S.C. Code Regs. 103-631 (1976 and Supp. 2003). Further, the Applicant is granted a waiver of 26 S.C. Code Regs. 103-610 (1976 and Supp. 2003) requiring the Applicant to maintain its financial books and records within the State of South Carolina. The Applicant is hereby granted permission to maintain its financial books and records at its principal headquarters in Bedminster, New Jersey. Further, the Applicant is granted a waiver of the requirement that books and

records be maintained in accordance with the Uniform Systems of Accounts (“USOA”). Finally, the Applicant is granted a waiver of 26 S.C. Code Regs. 103-612.2.3 (1976) requiring the filing of operating area maps because the Applicant has sought and obtained certification by this Order to provide telecommunications services throughout the State of South Carolina.

The Applicant is directed to comply with all Rules and Regulations of the Commission, unless the Commission specifically waives compliance with a regulation.

17. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
Bruce Duke, Executive Director

(SEAL)